

HARRIS ELLSWORTH & LEVIN

ATTORNEYS AT LAW
THE WATERGATE
2600 VIRGINIA AVENUE, N.W., SUITE 1113
WASHINGTON, D.C. 20037-1905

HERBERT E. HARRIS II
CHERYL ELLSWORTH
JEFFREY S. LEVIN

TELEPHONE: (202) 337-8338
FAX: (202) 337-6685
E-MAIL: hel@idt.net
www.internationaltrade-law.com

JOHN B. TOTARO, JR.
JENNIFER de LAURENTIIS

**NON-CONFIDENTIAL
VERSION**

November 27, 2001

FILED ELECTRONICALLY

Ms. Gloria Blue
Executive Secretary, Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Re: Certain Steel – Response to Request to Exclude Unfinished Carbon Steel
Butt-Weld Pipe Fittings from Import Relief Under Section 203

Dear Ms. Blue:

On behalf of Mills Iron Works, Inc. (“Mills”), Trinity Fitting Group, Inc. (“Trinity”), and Tube Forgings of America, Inc. (“TFA”), U.S. producers of carbon steel butt-weld pipe fittings, and pursuant to the Trade Policy Staff Committee’s notice requesting comments,¹ enclosed please find the non-confidential version of these firms’ response to a request to exclude unfinished carbon steel butt-weld pipe fittings from import relief under Section 203 filed on November 13, 2001 on behalf of Weldbend Corporation.

¹ Trade Policy Staff Committee; *Public Comments on Potential Action Under Section 203 of the Trade Act of 1974 With Regard to Imports of Certain Steel*, 66 Fed. Reg. 54321 (October 26, 2001). One of the steel products covered by the Trade Policy Staff Committee’s *Federal Register* notice is carbon and alloy flanges, fittings, and tool joints (steel product 6), which encompasses carbon steel butt-weld pipe fittings.

Please feel free to contact the undersigned should you have any questions.

Respectfully submitted,

/s/ Cheryl Ellsworth

Cheryl Ellsworth

John B. Totaro, Jr.

Counsel for Mills Iron Works, Inc.,
Trinity Fitting Group, Inc., and
Tube Forgings of America, Inc.

BUSINESS CONFIDENTIAL INFORMATION
Deleted From Pages 5 and 6

**BEFORE THE
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
TRADE POLICY STAFF COMMITTEE**

**NON-CONFIDENTIAL
VERSION**

**RESPONSE TO REQUEST TO EXCLUDE UNFINISHED CARBON STEEL
BUTT-WELD PIPE FITTINGS FROM IMPORT RELIEF UNDER SECTION 203**

**FILED ON BEHALF OF
MILLS IRON WORKS, INC.,
TRINITY FITTING GROUP, INC., AND
TUBE FORGINGS OF AMERICA, INC.**

**STEEL PRODUCT 6:
CARBON AND ALLOY STEEL
FLANGES, FITTINGS, AND TOOL JOINTS**

November 27, 2001

Cheryl Ellsworth, Esq.
John B. Totaro, Jr., Esq.
HARRIS ELLSWORTH & LEVIN
2600 Virginia Avenue, NW
Suite 1113
Washington, DC 20037-1905

Phone: (202) 337-8338

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EXECUTIVE SUMMARY

- The International Trade Commission made a unanimous affirmative determination of serious injury with respect to Product Group 22, a group that included BWPF – both finished and unfinished. This determination is indivisible, and Weldbend has presented no information indicating that the Commission intended to exclude unfinished BWPF from its determination.
- Unfinished BWPF are produced in the United States in commercial quantities and are sold between U.S. producers of finished BWPF. Weldbend's concern that domestic unfinished BWPF are more expensive than imported unfinished BWPF should not form the basis for an exclusion of these imports from relief measures.
- Administering an exclusion for unfinished carbon steel butt-weld pipe fittings ("BWPF") would be nearly impossible because both finished and unfinished BWPF are classified under the same tariff subheadings.
- Excluding imports of unfinished BWPF from relief measures would permit continued serious injury to domestic producers, and would facilitate circumvention of any measures applied to finished BWPF.

For the reasons set forth below, Mills, Trinity, and TFA respectfully submit that the request for exclusion from import relief submitted by Weldbend Corporation with respect to unfinished BWPF must be rejected.

I. Introductory Statement

Effective June 22, 2001, following receipt of a request from the United States Trade Representative (“USTR”), the International Trade Commission (“Commission”) instituted investigation No. TA-201-73 under section 202 of the Trade Act of 1974 (19 U.S.C. §2252) concerning certain steel products.² On October 22, 2001, the International Trade Commission (“Commission”) made a unanimous affirmative determination that imports of carbon steel fittings, flanges, and tool joints (“fittings”) were a substantial cause of serious injury to the domestic industry producing those articles.³ On October 26, 2001, the USTR’s Trade Policy Staff Committee (“TPSC”) published a notice requesting comments on issues related to the recommendation that the interagency group makes as to what action the President should take under 19 U.S.C. §2253(a) to facilitate efforts by the domestic industries producing certain steel products to make a positive adjustment to import competition and provide greater economic benefits than costs.⁴ One

² *Steel: Institution and scheduling of an investigation under section 202 of the Trade Act of 1974* (19 U.S.C. 2252), 66 Fed. Reg. 35267 (July 3, 2001). On July 26, 2001, the Commission received a resolution adopted by the Committee on Finance of the United States Senate that requested that the Commission undertake an investigation under Section 202 of the Trade Act of 1974 with respect to an identical list of steel products. The Commission consolidated the investigation requested by the Committee on Finance with investigation No. TA-201-73, instituted at the request of the USTR. *Consolidation of Senate Finance Committee Resolution requesting a section 201 investigation with the investigation requested by the United States Trade Representative on June 22, 2001*, 66 Fed. Reg. 44158 (August 22, 2001).

³ The Commission defined this product grouping, *i.e.*, Product Group 22, as follows: “{c}arbon and alloy fittings and flanges (“fittings”) are generally used for connecting the bores of two or more pipes or tubes together, or for connecting a pipe or tube to some other apparatus, or for closing the tube aperture. This category also includes tool joints for welding onto lengths of unfinished drill pipe to produce finished drill pipe.” *See* Staff Report to the Commission on Investigation No. TA-201-73 (October 12, 2001) (“Final Staff Report”) at TUBULAR-4.

⁴ *Trade Policy Staff Committee; Public Comments on Potential Action Under Section 203 of the Trade Act of 1974 With Regard to Imports of Certain Steel*, 66 Fed. Reg. 54321 (October 26, 2001) (“TPSC Comments Notice”).

of the steel products identified in the TPSC's *Federal Register* notice was carbon and alloy flanges, fittings, and tool joints, identified as steel product 6.

These comments are filed on behalf of Mills Iron Works, Inc. ("Mills"), Trinity Fitting Group, Inc. ("Trinity"), and Tube Forgings of America, Inc. ("TFA"), firms that manufacture carbon steel butt-weld pipe fittings ("BWPF"), an article within the carbon and alloy flanges, fittings, and tool joints product grouping.⁵ These comments constitute a response to the request for exclusion filed on behalf of Weldbend Corporation ("Weldbend") on November 13, 2001 pursuant to the TPSC Comments Notice. Weldbend requested that unfinished BWPF (what Weldbend refers to as "butt-weld pipe fitting forgings" or "fitting forgings") be excluded from any remedy imposed by the President under Section 203(a) of the Trade Act of 1974.⁶ In summary, Mills, Trinity, and TFA strongly oppose Weldbend's exclusion request. These domestic producers are confident that excluding unfinished BWPF would render ineffective any remedy imposed on finished BWPF.

II. The Commission Included BWPF – Both Finished and Unfinished – Within Its Serious Injury Determination

As stated *supra*, the Commission determined unanimously that increased imports of certain steel products, including unfinished and finished BWPF classified within HTSUS subheadings 7307.93.3000 and 7307.93.9030, were the cause of serious injury to

⁵ BWPF includes finished and unfinished carbon steel BWPF, both those having an inside diameter not exceeding 360 millimeters classified in HTSUS subheading 7307.93.3000 ("small diameter"), and those with an inside diameter larger than 360 millimeters classified in HTSUS subheading 7307.93.9030 ("large diameter"). Products classified under subheadings 7307.93.3000 and 7307.93.9030 were included within the Commission's determination of serious injury. See Final Staff Report at TUBULAR-4.

⁶ Request of Weldbend Corporation to Exclude From Import Relief Carbon Steel Butt-Weld Pipe Fitting Forgings (Included in HTSUS 7307.93.3000, 7307.93.9030) (November 13, 2001) ("Weldbend Exclusion Request").

the domestic industry producing these products. However, Weldbend questions the clearly defined scope of the Commission's serious injury determination, and argues that

the President should reject as speculative any recommendation of import relief that encompasses fitting forgings solely because of the happenstance that fitting forgings share a tariff classification with finished fittings, as to which a strong record in support of import relief has been established.⁷

The fact is that the two tariff classifications for BWPF encompass an enormous variety of products, both finished and unfinished. Import data are not available for any subgroup of products that fall within these classifications. For example, import data are not available on BWPF in the shape of elbows or tees, just as they are not available for finished and unfinished fittings. But this in no way detracts from the fact that the Commission's determination applies to all products encompassed within the "fittings" product grouping for which it found serious injury, including HTSUS subheadings 7307.93.3000 and 7307.93.9030.

Moreover, the Commission has consistently determined in antidumping proceedings that finished and unfinished BWPF constitute a single like product.⁸ The Commission also determined in its 1999 sunset review that antidumping orders covering both finished and unfinished BWPF should be continued. The Commission's serious injury determination with respect to BWPF stands on similarly solid ground. The Commission's unanimous affirmative determination with respect to the "fittings" product grouping encompassed imports within classifications 7307.93.3000 and 7307.93.9030 – which include both finished and unfinished BWPF – as contributors to the serious injury

⁷ *Id.* at 6.

⁸ *Carbon Steel Butt-Weld Pipe Fittings From Brazil China, Japan, Taiwan and Thailand*, USITC Pub. 3263 (December 1999) at 3 and I-7 (determinations with respect to small-diameter BWPF).

suffered by domestic producers. The Commission did not exclude any products within these classifications. Weldbend has produced no information indicating that the Commission intended its determination to cover only finished BWPF, or that unfinished BWPF did not contribute to the serious injury suffered by U.S. BWPF producers. Therefore, remedy measures should apply to BWPF, both finished and unfinished.

III. Unfinished BWPF Are Produced In The United States In Commercial Quantities And Are Sold Between U.S. Producers Of Finished BWPF

Departing from the standard rationale for requesting an exclusion from import restrictions for a particular product, Weldbend explains that

the issue is not whether the product in question, fitting forgings, is produced in the United States, nor whether the domestic capacity to produce the product is sufficient to meet domestic demand. Fittings forgings are produced in the United States, and there is probably domestic capacity to satisfy demand, in a purely arithmetic sense. The problem facing Weldbend is that there is no commercial market for fitting forgings.⁹

Weldbend describes itself as an integrated producer of BWPF, that is, a producer that manufactures finished BWPF from pipe. However, “{t}o fill the gaps in its forging capacity, and to offer a complete line of butt-weld pipe fittings at competitive prices, Weldbend must purchase certain fitting forgings.”¹⁰ Weldbend states that it is prevented from satisfying its unfinished BWPF requirements domestically for two reasons. First, Weldbend states that domestic producers are unable to provide unfinished BWPF in sufficient quantity and quality. This statement is belied by the experience of [].

⁹ Weldbend Exclusion Request at 4.

¹⁰ *Id.* at 7.

For example, [

] In addition, Weldbend included in its exclusion request a representation of three separate price quotes for unfinished fittings that Weldbend obtained from Trinity in 2000.¹¹ [

]. These facts are concrete evidence of a domestic supply of unfinished fittings of which Weldbend is well aware. These facts also distinguish the instant circumstances from those observed by Chairman Miller and Commissioner Koplan in *Certain Steel Wire Rod* with respect to certain specialty wire rod products; because unfinished BWPF are clearly available in commercially significant volumes, unavailability of domestic supply should not form the basis of an exclusion.¹²

Weldbend cites price as the second factor that “frustrates” its attempts to purchase domestic unfinished fittings. In this context, Weldbend references the testimony of its Chairman, James J. Coulas, Sr., at the Commission’s November 8, 2001 hearing on remedy. Mr. Coulas testified that unfinished fittings were unavailable from domestic sources “at competitive prices.”¹³ Weldbend then references the price quotes it received

¹¹ *Id.* at Exhibit A.

¹² *See Certain Steel Wire Rod*, USITC Pub. 3207 (July 1999) at I56 and Weldbend Exclusion Request at n.7.

¹³ Weldbend Exclusion Request at 7-8.

from Trinity in 2000 as evidence that domestic producers cannot supply unfinished fittings at prices as low as imported unfinished fittings. Weldbend concludes that only if it uses low-priced imported unfinished BWPF will its finished BWPF be competitive with imported finished BWPF.¹⁴ In the instant investigation, the Commission found underselling by imports of a representative small-diameter BWPF in 100 percent of the pricing comparisons it recorded during the period of investigation.¹⁵ These data also demonstrate that at no point during the period of investigation did the imported BWPF undersell the domestic product by less than 7.3 percent, and that margins of underselling reached levels of 36.5 percent.¹⁶

Thus, Weldbend tacitly concedes that imports of unfinished BWPF, like BWPF in general, are underselling the domestic product. Weldbend is essentially arguing that it needs low-priced imported unfinished fittings to compete with the low-priced imported finished fittings that are consistently underselling domestic fittings in the U.S. market. The President should not permit the relief measures intended to assist an entire industry to be watered down to preserve a supply of cheap intermediate materials for one domestic producer.¹⁷

¹⁴ *Id.* at 8.

¹⁵ Final Staff Report at TUBULAR-86, Table TUBULAR-67.

¹⁶ *Id.*

¹⁷ Weldbend states its belief that “both Trinity and Tube Forgings of America have purchased imported fittings forgings over the years to fill the gaps in their forging capacities.” Weldbend Exclusion Request at n.4. Assuming that Weldbend’s belief is accurate, it is noteworthy that throughout the injury and remedy phases of the Commission’s investigation, and now in the TPSC proceedings, no domestic producer of BWPF other than Weldbend has opposed the inclusion of unfinished BWPF. That is because this exclusion will not help the domestic industry adjust to import competition, and in fact will allow the serious injury found by the Commission to continue.

IV. Administering an Exclusion for Unfinished BWPF Would Be Nearly Impossible

The tariff classifications for BWPF include both finished and unfinished BWPF. In contrast, there are separate tariff classifications for finished flanges and unfinished flanges.¹⁸ Consequently, unlike flanges, there is no clear dividing line provided by the tariff schedule that permits Customs to determine whether an imported fitting is finished or unfinished. Also, in contrast to Weldbend's characterization, there are not always significant physical differences between BWPF that are finished and those that are claimed to be unfinished.

Weldbend states that "{f}orgings undergo extensive manufacturing to become finished fittings – machine beveling, shotblasting, boring and tapering, grinding, die-stamping, painting, and inspecting, among others." This may be so, but unfinished BWPF upon which all but one of these manufacturing steps has been performed are still accurately characterized as "unfinished BWPF." The Commission has recognized this fact in its numerous determinations regarding BWPF. For example, the Commission found that

{a} fitting is finished only if all advancements have been made and the fitting is acceptable to the end-users. Thus, the activities of converters are necessary to prepare the product for its final use. The number of conversion steps performed by converters, and the value added by converters, are quite variable.¹⁹

In addition, the Commission has observed that

¹⁸ Unfinished carbon and alloy steel flanges ("Flanges: Not machined, not tooled and not otherwise processed after forging") are classified under subheadings 7307.91.10 and 7307.91.30, HTSUS, and finished carbon and alloy steel flanges ("Flanges: Other") are classified under subheading 7307.91.50, HTSUS.

¹⁹ *Butt-Weld Pipe Fittings from Brazil and Taiwan*, USITC Pub. 1918 (December 1986) (emphasis added) ("BWPF from Brazil and Taiwan"), *cited in* BWPF Sunset Review at I-4 n.8.

the cost to machine bevel the unfinished fittings is the largest single “finishing” cost, but that the resultant fitting is generally considered to be unfinished with steps such as cleaning and painting usually required.²⁰

Finally, the Commission has defined an unfinished BWPF as

a fitting that has been advanced after forging but which requires at least one more processing step (i.e., shot blasting, machine beveling, boring and tapering, grinding, die stamping, inspection, or painting) to finish the fitting.²¹

Thus, contrary, to Weldbend’s assertion, imports of fitting forgings may not be “identified by the physical description ‘fittings not machined, not tooled, and not otherwise processed after forging.’”²² The Commission has recognized that fittings that have undergone numerous machining, tooling, and processing steps after forging are nonetheless unfinished fittings. Therefore, again contrary to Weldbend’s recommendation, Customs could not readily apply a “not machined, not tooled, and not otherwise processed” description to exclude unfinished fittings from the relief measures applied to finished BWPF classified in the same tariff subheadings.²³ Rather, excluding unfinished BWPF from any import restrictions placed on finished BWPF would require Customs officers to examine each entry of BWPF and evaluate whether every possible processing step had been performed on those fittings. Weldbend’s “solution” would place an impossible burden on Customs and invite wholesale circumvention of relief applied to finished BWPF.

²⁰ BWPF from Brazil and Taiwan at n.17.

²¹ *Certain Carbon Steel Butt-Weld Pipe Fittings from China and Thailand*, USITC Pub. 2528 (June 1992) (emphasis added), *cited in* BWPF Sunset Review at I-4 n.9.

²² Weldbend Exclusion Request at 2.

²³ *Id.*

V. Excluding Unfinished Fittings from Import Relief Would Permit Continued Injury to Domestic Producers and Invite Circumvention of Relief Measures

Weldbend contends that excluding unfinished BWPF from import relief would not harm the domestic industry. The facts support the opposite conclusion. First, Weldbend contends that the “volume of imports {of unfinished BWPF} is likely to remain low.”²⁴ The TPSC should take this statement with a grain of salt, particularly in light of (1) Weldbend’s statement that it purchases a “substantial volume” of unfinished BWPF and that domestic producers cannot satisfy Weldbend’s needs for this product,²⁵ (2) the Commission’s observation in its 1999 sunset review of small-diameter BWPF that “large numbers of unfinished fittings have been imported in past years,”²⁶ and (3) the identification of 18 “major” producers of unfinished BWPF located in 13 foreign countries that was included in Weldbend’s exclusion request.²⁷

Second, Weldbend argues that “because all of the domestic producers compete exclusively in the finished fitting market, imported fittings would never confront them in the marketplace.” Weldbend conveniently ignores the fact that that cheap imported unfinished fittings do confront domestically produced BWPF in the marketplace after conversion into finished BWPF. As we explained *supra*, the processing required to finish unfinished BWPF can be very minor. And the Commission has observed that even where the unfinished BWPF is truly a rough forged fitting, the combined finishing operations

²⁴ *Id.* at 9.

²⁵ *Id.* at 7.

²⁶ BWPF Sunset Review at note to Table I-4.

²⁷ Weldbend Exclusion Request at 4-5. These producers also manufacture and export finished BWPF to the United States.

would represent only about 14 percent of the total production cost of the BWPF.²⁸ Weldbend acknowledges as much when it states that it can only compete with imported finished BWPF by purchasing and finishing low-priced unfinished BWPF.²⁹ Weldbend implies that it is able to sell the finished BWPF it has converted from imported unfinished BWPF at prices comparable to the imported finished BWPF which demonstrably and consistently undersell the domestic product.

Finally, and perhaps most outrageously, Weldbend argues that if unfinished BWPF were excluded from import relief,

to the extent that any of the integrated producers, Weldbend or others, found it more economical to source particular fitting forgings from abroad rather than making them domestically, they would be free to do so, thereby enhancing their competitiveness in the U.S. market for finished fittings.³⁰

Thus, in Weldbend's view, an appropriate method for the domestic BWPF industry to adjust to import competition would be to abandon integrated production of BWPF and become mere converters and finishers of low-priced imported intermediate products. To encourage such actions by domestic producers would be inconsistent with the President's obligation under 19 U.S.C. §2253(a) to take actions that "will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs." If domestic producers were to abandon the pipe-to-unfinished-BWPF segment of their integrated production lines, a portion of the U.S. manufacturing base would be lost, major capital equipment would be

²⁸ BWPF from Brazil and Taiwan at n.17.

²⁹ Weldbend Exclusion Request at 8.

³⁰ *Id.* at 9.

idled, and a significant number of workers would be terminated. The combined economic and social costs resulting from U.S. producers purchasing rather than manufacturing unfinished BWPF would far outweigh any cost savings to the formerly-integrated U.S. producers.

Practically speaking, it is unclear whether any of the domestic integrated producers would follow Weldbend's suggestions. Nevertheless, excluding unfinished fittings from the scope of remedial measures would invite foreign producers to evade the relief provisions by shipping most, if not all, of their fittings to the United States in a nearly-finished state. Minor processing of these unfinished fittings in a machine shop – either an existing facility or one set up in the wake of import restrictions on finished BWPF – would thereby permit wholesale circumvention of any relief measures applied solely to finished fittings.

VI. Conclusion

For the reasons discussed in this response, we urge the TPSC not to exclude unfinished BWPF from the scope of its remedy recommendations to the President. The President must apply restrictions that encompass imported unfinished BWPF to ensure that all BWPF, including those that Weldbend produces from imported unfinished

BWPF, will compete on a more level playing field. Excluding unfinished BWPF would undermine any relief intended to address the serious injury suffered by domestic BWPF producers.

Respectfully submitted,

/s/ Cheryl Ellsworth

Cheryl Ellsworth
John B. Totaro, Jr.

HARRIS ELLSWORTH & LEVIN
2600 Virginia Avenue, N.W., Suite 1113
Washington, D.C. 20037-1905

Counsel for Mills Iron Works, Inc.,
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